Transportation Services of Watertown, Inc. *and* **Thomas Vilmin.** Case 30–CA–6912

10 April 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

On 5 July 1983 Administrative Law Judge Richard L. Denison issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Transportation Services of Watertown, Inc., Watertown, Wisconsin, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

With regard to the General Counsel's exception 8, we find that, under all the circumstances, the General Counsel's examination of Maas was proper and did not exceed the scope of the allegations in the complaint.

Chairman Dotson agrees with the judge that the General Counsel's examination of employee Maas served no useful purpose.

We correct the judge's error in fn. 3 of his decision that Vilmin testified that Kerr's meeting with employees took place in early July 1981. The record shows that Vilmin did not so testify. Kerr testified that the meeting took place during the last 2 weeks of July. We also correct the judge's statement, in fn. 5 of his decision, that Vilmin received a written warning on July 1. The warning was dated July 1, but Vilmin did not receive it until later that month or early August. Neither of these errors, however, affects the judge's conclusions.

DECISION

STATEMENT OF THE CASE

RICHARD L. DENISON, Administrative Law Judge. This case was heard on October 21 and 22, 1982, in Watertown, Wisconsin, and on November 30, 1982, in Hartland, Wisconsin, based on an original charge in Case 30–CA–6912, filed by Thomas Vilmin, an individual, on January 12, 1982. The complaint, issued February 25, 1982, and amended at the close of the hearing, alleges that the Respondent violated Section 8(a)(1) and (3) of the Act by discharging Thomas Vilmin on September 22, 1981, and by otherwise discriminating against him in reducing his hours, and denying him requested time off. It is also alleged that the Respondent independently violated Section 8(a)(1) of the Act by interrogating its employees, soliciting their grievances, and by threatening plant closure, more stringent enforcement of work rules, and discharge, all because of their union activities.[1]

The Respondent's answer denies the allegations of unfair labor practices alleged in the complaint. On the entire record in the case, including my consideration of the briefs and observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

Based on the allegations in paragraphs 2 and 3 of the complaint, respectively, admitted by the Respondent's amended answer, I find that the Respondent is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES

A. *The Aborted Union Campaign and the Alleged Violations of Section 8(a)(1) of the Act by Respondent Vice President Charles G. Kerr*

The Respondent is a bus company in Watertown, Wisconsin. In January 1981 the Respondent succeeded to the operation of city bus service pursuant to a contract with the city of Watertown, which stipulated that the Respondent was required to hire the former contractor's drivers.[2]

[1] During the morning session of the hearing, on October 21, I advised the General Counsel that findings of violations would not be made on matters outside the scope of the complaint, absent an appropriate amendment to that document. (Official Tr., p. 60, ll. 5 through 10.) Pursuant to that ruling, in the closing minutes of the hearing, on November 30, 1982, the General Counsel moved to amend the complaint to add the additional allegations of 8(a)(1) violations specified in G.C. Exh. 41 in evidence. That motion was granted, and minutes later the hearing was closed. Nevertheless, in fn. 4 on p. 10 of the General Counsel's brief, the General Counsel states, "While not specifically alleged, but certainly fully litigated, the uncontradicted testimony of Vilmin also demonstrates Kerr [sic] to had told the assembled employees he denied them a possible wage increase because of their union activities, *supra*. General Counsel requests an appropriate finding and remedy as to this matter." This request is denied. The General Counsel's request is in direct contravention of my ruling of October 21. Furthermore, the General Counsel was afforded an opportunity to fully amend the complaint at the close of the hearing, at a time when all of the witnesses necessary to a full exploration of the additional issue the General Counsel now seeks to raise were available. The issue to which the General Counsel alludes was not fully litigated, since all that appears in the record is an uncorroborated statement by Vilmin concerning a reference by Kerr to a possible wage increase, without any descriptive details, including evidence concerning whether or not a decision to institute such an increase had actually been made.

[2] All dates are in 1981 unless otherwise specified.

The Respondent operates three city bus routes, utilizing the services of six regular city drivers. During the period May through August 1981, Charles Kittel, Curtis Maas, and Kenneth Wilde drove the morning shift, while Robert Couse, Marvin Stoute, and Michael Eauslin drove during the afternoon. On August 8 or 9, Eauslin quit, and was replaced by Lawrence Voita, an experienced city bus driver and long-term company employee who had been driving since June on a full-in basis.

The Respondent also operates approximately 21 school bus routes, on a seasonal basis between late August and early June, covering the Jefferson County, Wisconsin area, with access to the cities of Madison and Janesville. The Respondent's school bus operation employs 31 drivers, of which between 12 and 15 drivers perform services for the Watertown School District.

Thomas Vilmin was hired by Driver-Supervisor Marin A. Reyna on February 2 as a school bus driver. Beginning with his second or third week of employment, Vilmin also relieved the city drivers at various times. About the second or third week of April, Vilmin began talking with the city drivers about organizing a union, whenever they would meet on their routes at the transfer point at Third and Madison Streets in Watertown. Thereafter, Vilmin contacted Gene Gowey, an organizer for Teamsters Local 695 in Madison. Gowey held a meeting at Vilmin's home during the first week of May, attended by the city drivers, at which he spoke about the operations of the Union and questioned those present concerning their employment desires. Vilmin signed a union authorization card at this meeting, and within the next 2 weeks obtained signed cards from all seven city drivers and six to eight school bus drivers during visits to their homes or conversations at the transfer point. Vilmin then mailed the cards to Gowey. On June 2, Local 695 requested recognition from the Company, and filed a representation petition seeking a unit of "all full-time and regular part-time bus drivers employed by the city of Watertown." In its response a week or two later, the Respondent took the position that this unit was inappropriate and that the appropriate unit should also include the school bus drivers and the mechanics. Vilmin then renewed his organizing activities, assisted for the first time by city driver Kenneth Wilde, in an effort to obtain additional authorization card signatures among the school bus drivers and mechanics. Vilmin and Wilde were unsuccessful, and on June 18 Local 695 filed a request for permission to withdraw its petition with the Regional Director for Region 30 of the Board. On June 19 the Regional Director issued an order approving the withdrawal of the petition, canceling the scheduled representation hearing, and closing the case.

In early July, Charles Kerr held a meeting with the city drivers in the drivers' breakroom of the terminal.[3] Kerr presided over the meeting, and was the only speaker. In attendance were Thomas Vilmin, Robert Couse, Marvin Stoute, Kenneth Wilde, Charles Kittel, and Curtis Maas. Michael Eauslin was absent. Kenneth Wilde testified that Kerr began the meeting by speaking about "something" not pertaining to the Union. Wilde was unable to remember any details concerning Kerr's opening remarks. Then, according to Wilde, Kerr stated that he and the city were both mad and upset about the employees wanting a union, and "if the union got in that would be one big headache for him and he would shut the whole place down and sell everything." Kerr also said as long as they wanted a union, he was going to enforce the work rules. Then Kerr stated that one of the employees had complained about a phone call concerning the Union which had wakened that person early in the morning. Kerr stated that any more union phone calls should be made at a reasonable time of the day. However, Kerr did not mention the name of the caller or the names of any persons involved in the union campaign. In response to leading questions by the General Counsel following Wilde's account of Kerr's talk to the assembled employees, Wilde added that Kerr stated he knew who was involved in the Union. Then Kerr asked why the drivers wanted a union, and what their gripes were. Wilde responded that their hourly wages were not high enough, and that it would be nice if the Company paid a greater percentage of their health insurance. Kerr answered that he would check into the matter concerning the hourly wage and health insurance. Then Tom Vilmin spoke, but Wilde could not remember what he said. Finally, Bob Couse mentioned the desirability of having restroom facilities available at the transfer point at Third and Madison, to which Kerr replied that it would be all right for the drivers to stop at any available facility on their route even if there were passengers on the bus.

Tom Vilmin agreed with Wilde concerning who was present at the July meeting, but differed in his account of Kerr's remarks to a significant extent. According to Vilmin, Kerr stated that he was very disappointed when he heard they were trying to start a union. He stated he wanted to know why they were doing that, and what he was not offering that the Union could offer. He asked for them to tell him their problems and their gripes. It was at this point that Wilde stated he would like to have more money, to which, according to Vilmin, Kerr answered that he had been working on a higher wage but when he heard about the Union he dropped the whole thing. Vilmin spoke up, stating that he was interested in job security, since he did not want to be driving for a year or two and have a new manager come in who would want to start from scratch with new drivers. Kerr answered that Vilmin should not worry because that would not happen. Then Couse spoke in favor of the installation of a restroom at the Third and Madison transfer point, which Kerr stated the city would never support. He suggested that they use gas station restrooms on their routes as a solution to the problem. Then Kerr repeated that he was very disappointed when he heard they wanted to get a union in, and stated that if it went

[3] No witness was able to establish the precise date of the meeting. All witnesses agreed that it occurred in July. Vilmin testified that the meeting took place in early July. I credit his estimate, which is supported by Kerr's testimony that the meeting was held pursuant to the advice of his attorney following the Union's withdrawal of the petition in order to find out what problems he had and talk with the employees to see if they could resolve anything without having a union.

through they would all lose their jobs because the city would not put up with it. According to Vilmin, Kerr said that the two drivers who had contacted one of the school bus drivers 3 or 4 days before, early in the morning, had better not do that to anyone else. He said they should at least wait to a decent hour. Vilmin concluded that Kerr was looking in the direction of him and Wilde when he made this latter statement. At this point in his testimony Vilmin had exhausted his recollection. Thereafter, pursuant to an explicit leading question by the General Counsel, Vilmin testified that Kerr asked them, in addition, what was more important, having a job or having the Union. On cross-examination Vilmin altered his testimony by stating that during the meeting Kerr specifically said "that if the union did go through we would all be out of a job, he would close up, close the thing, the city wouldn't stand for the union, and he wouldn't stand for it."

Kerr testified that he first heard of the union campaign in June when he received the Union's letter demanding recognition. He denied knowledge of any employees' involvement with the Union until he learned sometime in August that Wilde had telephoned employee Kathy Roth about the Union. He specifically denied knowledge of Vilmin's efforts on behalf of the Union. According to Kerr, he called the July meeting of city drivers pursuant to his attorney's advice, in order to find out what problems he had and to see if they could be resolved without the employees going to a union. Pursuant to his invitation some of the drivers expressed their concerns. Couse, Wilde, and Vilmin did most of the talking. Vilmin wanted to know who would run the city bus system, if he did not. According to Kerr, he answered that it probably would not be run at all, and if there were some "radical changes" right away the city might not look favorably on it. He denied stating that the Company would close down if the Union came in, but added, "If I did, it would have been in answer to a question." However, Kerr admitted having asked the assembled employees why they felt they had to have a union.

I am persuaded, based on the testimony of Vilmin and Wilde and the admissions of Kerr, that Kerr interrogated employees concerning their union sympathies and solicited grievances from them with a view to making adjustments for the purpose of thwarting employees' union desires. I also find that he threatened to enforce the work rules and to close down operations if the Union came in. It is clear that, even if Kerr made his remarks concerning closure in the context of his views concerning how city officials might react in the event of successful organization by the Union, he was merely engaging in speculation since he failed to present to the employees any objective evidence as a basis for his prediction. Accordingly, I find that Kerr violated Section 8(a)(1) of the Act in these respects.

I further find, however, that Kerr did not violate Section 8(a)(1) of the Act by threatening to discharge employees because of their union activities or sympathies, as alleged in the complaint. In several respects Vilmin's and Wilde's testimony was not mutually corroborative in important areas. This is significant, especially in view of the fact that they were not sequestered witnesses at the hearing. Thus Wilde failed to support Vilmin's testimony that Kerr threatened that if the Union came in the employees would lose their jobs. No other corroborative testimony was produced. Although Curtis Maas, who was present at the meeting, was called as a witness by the General Counsel, he was not asked to relate his version of Kerr's remarks. The only other witness present at that meeting, Charles Kittel, remembered only Kerr interrogating the employees concerning whether they wanted a union or not. Vilmin's and Wilde's testimony varies in other important areas as well; for example, Wilde did not corroborate Vilmin's testimony that Kerr said he had been working on higher wages for the employees but had dropped the matter when he heard of the Union. Nor did Wilde corroborate Vilmin's assertion that Kerr stated that the two drivers who had contacted a school bus driver had better not do that to anyone else. On the other hand, Wilde maintained that Kerr had said that he knew who was involved in the Union. Vilmin failed to corroborate Wilde in this respect, despite the fact that, as an alleged discriminatee in this matter, it is unlikely he would forget to mention such an important statement, had it occurred. Consequently, for the reasons set forth above, I find portions of Vilmin's and Wilde's testimony unreliable and not credible.

B. *The Alleged Discriminatory Reduction in Hours, Denial of Time Off, and Discharge of Thomas Vilmin*

In addition to his primary assignment of driving a school bus route, Vilmin also served as one of the Company's relief drivers. Thus, beginning the second or third week of February, he began driving a city bus during the time when the Company's six city drivers were on their 20-minute breaks. He also occasionally drove for city drivers who were on vacation. Furthermore, when Kerr took over the operation of the city buses in January and hired the former contractor's drivers, he agreed to continue the previous practice of permitting the city drivers to substitute for one another pursuant to individual arrangements. Documentary evidence submitted by each of the parties, in the form of summaries of Vilmin's hours worked, shows that Vilmin drove 35 to 40 hours per month as a substitute for city driver Mike Eauslin, who frequently utilized Vilmin as a substitute, pursuant to an approved private arrangement, while Eauslin looked for other work.[4] Thus, Vilmin drove approximately 80 to 160 hours per month as a city bus driver. The records reveal that Vilmin's hours driving a city bus were at their highest point in June or July, the period during which the union campaign reached its climax and Kerr made his speech to the assembled drivers. On August 8 or 9, Eauslin quit, having found a better paying job driving over the road. Vilmin's hours driving a city bus decreased at this point, since he no longer substituted for Eauslin. The documents in evidence show a direct correlation between these events and Vilmin's loss of city driving hours. Nevertheless, Vilmin's hours driving a

[4] The parties stipulated that the differences in Vilmin's hours revealed by a comparison of their respective summaries were, for the most part, insubstantial.

city bus were still no less than they had been in the winter and spring.[5]

Finally, the General Counsel contends that Vilmin was discriminatorily denied an opportunity to substitute for city drivers while they were on vacation. According to Vilmin, around the beginning of May he learned that Charlie Kittel was going on vacation. Vilmin went to see Marin Reyna who told Vilmin he had given the substitute work to someone else. Vilmin then went and complained to Kerr about the matter, but Kerr stated that the Company wanted to keep Vilmin available for relief. This was the only specific instance complained of by Vilmin where he was allegedly denied an opportunity to relieve vacationing drivers. Reyna and Kerr did not deny having the conversation with Vilmin. However, an analysis of the hours worked by the Respondent's city drivers during that period reveals that Kittel, the only city bus driver to take a vacation in the summer of 1981, was away from work during the week of June 23 through June 27, a time when Vilmin was substituting for Curtis Maas. Both Maas and Kittel drove morning shifts. After Maas returned to work, Vilmin was employed substituting for Mike Eauslin. During this period, Eauslin's total hours were actually higher than they had been before. Considering all these factors and the record as a whole, I find that the Respondent did not discriminate against Vilmin by reducing his hours because of his union activities as alleged in the complaint.

On September 10, after completing his afternoon run, Vilmin went to Driver-Supervisor Marin Reyna's office and received permission to take the following workweek off in order to go to Oklahoma to help his father-in-law move some machinery.[6]

After their conversation Reyna reviewed his trip book and saw that he would not have enough drivers to cover Vilmin's route, the other school bus and city routes, and also hold himself available to cover emergencies on the special education routes, with which only he was familiar. The school year runs from late August to early June. Reyna further explained that unlike city bus routes, where the stops are fixed and do not vary, school bus routes are constantly changing. The bus stops are set up in accordance with where the pupils live, especially in the case of kindergarten pupils who must be picked up at their doorstep. These factors cause the period from the beginning of school in late August sometime in October to be the Company's busiest time for the school bus service, since it is during this time that the drivers are learning their routes, new stops, new students, and the different schools to which these students are to be transported. In short, it is a confusing period, during which it is most inconvenient for a driver, in the process of learning the changes in his route, to absent himself from work.[7] On Friday, September 11, about 3 p.m., as Vilmin was leaving for his afternoon run, Reyna told Vilmin that he had decided he could not spare him. Vilmin insisted that he had to go because both he and his father-in-law had made plans based on Reyna's previous assurance. Vilmin also claimed that he did not see why others could take off when he could not, an obvious reference to the situations involving Maas and Eauslin. Reyna answered that he could not spare Vilmin the following week and, if he took the trip, he would have to replace him and Vilmin would no longer have a job. Vilmin stated that he understood. Reyna testified that it was company policy to allow employees to have time off on short notice for funerals and illnesses in the family. Other than that, he said, if in his judgment the employee is needed, the Company asks that person to select another time. No evidence was introduced to refute either the existence of this policy or the accuracy of Reyna's statement.

On September 12, Vilmin left to go to Oklahoma. That same day he was terminated by the Company. According to Reyna, who discharged him, Vilmin, an otherwise good employee, was fired only because he took time off from work without permission at a time during which he was needed. In Respondent's view this conduct constituted a form of insubordination as well. Reyna's statement of the Respondent's position was supported by the testimony of Vice President Charles Kerr.[8]

Vilmin did not appear for work on Monday, September 21, in accordance with his September 10 assurance to Reyna. Instead, he telephoned Reyna on the morning of September 22.[9] Vilmin said he was back, and asked if

[5] Vilmin does not contend, and Kerr denies, and there is no evidence to support any assertion that Kerr ever promised that Vilmin would be Eauslin's replacement. Instead, Kerr selected Larry Voita, a former long-term company employee with an unblemished driving record. Kerr testified that he excluded Vilmin from consideration as Eauslin's permanent replacement because Vilmin had had two accidents and had lied to him in denying that he had missed a stop, an incident which Kerr had personally observed. The other incidents to which Kerr referred concerned Vilmin's crossing a railroad track in front of a train on May 27, and hitting a deer with a city bus on June 10. Vilmin admitted to these two occurrences, but sought to minimize them in his testimony. He received a written warning on July 1 concerning these incidents in which Kerr admonished him that any further similar incident would result in his dismissal. There is no allegation nor contention on the part of the General Counsel claiming that either the circumstances surrounding these incidents or the issuance of the warning was in any way discriminatory. Finally, although Vilmin denied missing the stop at the local Shop-Ko Store, I credit Kerr's testimony concerning what he observed. The General Counsel recalled Kenneth Wilde as a rebuttal witness to corroborate Vilmin's denial that he had missed the stop. However, Wilde did not do so. Instead, he testified Vilmin told him that he had stated to Driver-Supervisor Reyna that *if* he had missed the stop someone would have called the Company. Wilde did not testifiy that Vilmin denied missing the stop. Thus, I find no evidence of discrimination or disparate treatment concerning the basis on which Kerr excluded Vilmin from consideration as Eauslin's replacement.

[6] Vilmin testified that this conversation occurred on September 9. I credit Reyna, whose testimony, unlike Vilmin's, was consistent and corroborated. Furthermore, it is immaterial whether Vilmin requested permission to be off or whether he simply told Reyna he was taking off the following week since, in any event, Reyna initially gave his permission.

[7] In 1981 the school term began on August 26. Reyna's testimony in this regard was corroborated by that of Charles Kittel.

[8] Consequently, the warning received by Vilmin on July 1 and the events described therein are immaterial with respect to Vilmin's termination.

[9] Vilmin claimed he called his wife on Sunday, September 20, and told her to phone the Company and tell them he would not return on time. Vilmin could not recall where he was at the time of this conversation. Later, he testified, she called back, told him she had phoned Reyna, and that Reyna had said "fine." Glenna Irene Vilmin's testimony was different. She stated that her husband telephoned her on either Saturday or Sunday night and asked her to call Reyna to tell him that he would be late because "it was going to take longer." She stated that she called Reyna at home that night and told him that her husband was going to be a day late and would be in on Tuesday morning. Reyna said, "Fine, he

Continued

Reyna wanted him to work breaks for the city drivers. Reyna answered that Vilmin had been fired, and that, if he wished, he could talk to Charles Kerr at 1 p.m. Vilmin met with Kerr in the mechanics' office in the shop at that time. No one else was present. In response to Vilmin's question concerning why he was fired, Kerr replied, "We needed you last week, and you weren't available." Choosing to ignore his conversation with Reyna on Friday, September 11, Vilmin claimed that Reyna had given him permission, and that he had to go because his father-in-law needed him. Vilmin protested that he had been driving all summer for "these guys" whenever they wanted to leave, citing Curtis Maas as an example.[10] Then, according to Vilmin, Kerr responded that when his father died he had left him the business, and that made him the boss. Therefore, he said, he could do anything he wanted, and that was how it was going to be. Vilmin allegedly replied that he had just stopped down there to find out why he was fired, and that he heard it was for a certain reason. Kerr asked what reason. Vilmin did not answer. Then Kerr allegedly stated, "If you heard it was because of the union you're wrong." Vilmin testified that the conversation ended at this point with Vilmin saying simply, "I heard because of a reason." Kerr denied having any knowledge of Vilmin's union sympathies or activities during the period of time in issue in this proceeding. I credit his denial. I do not credit Vilmin's testimony that Kerr referred to the Union during Vilmin's termination interview.[11]

Reyna credibly testified that, after Vilmin left his office following their September 11 conversation, Reyna called Craig Morgan, a job applicant for a school bus driver, and told Morgan that if he could obtain a school bus driving license Reyna had a job for him. During the fall of the year, when many others are seeking to become drivers, the processing of applicants is often delayed. Morgan passed his license examination on September 25 and, according to the stipulation of the parties, received his medical examination sometime between September 20 and 29. During the month of September, Reyna also hired Dawn Bergren to replace Carol Volkman and Richard Schwane to replace Burt Prop.

I find that the General Counsel has failed to prove by a preponderance of the evidence that Thomas Vilmin was discharged because of his union sympathies and activities. There is no credible evidence to prove that the Respondent knew that Vilmin initiated or was active in the aborted union organizational drive. Only by substituting speculation for evidence can the element of knowledge be supplied.[12] Both Kerr and Reyna credibly denied knowledge of his activities. Efforts by the General Counsel to prove such knowledge through other drivers failed, and served to emphasize the inappropriateness of the suggested application of the so-called small plant doctrine to a situation where the work force is spread all over the county. Furthermore, the only union activist provably known to these witnesses and the Respondent was Kenneth Wilde who continued to work for the Respondent, and concerning whom no form of discrimination is alleged.

It is almost axiomatic in the working world that, absent a governing labor agreement or published regulations to the contrary, an employee is expected to report for work on scheduled workdays unless excused by his employer. The Respondent's established policy was to grant time off, even on short notice, for illness or a funeral, but in the case of other reasons, to require employees to work and select another time, when they were needed at work. Reyna's logical explanation of the Respondent's needs at that particular time of the year is fully corroborated, and on September 11 he denied Vilmin permission to be absent the following week. He also cautioned him concerning the specific consequences of disobedience. Vilmin went anyway, stayed even longer than he had specified, and returned to find he had been fired. The General Counsel's efforts to prove discriminate treatment, as discussed earlier, failed. Finally, the Respondent also proved that other former employees have not been reinstated after having engaged in similar conduct.[13] I find that the Respondent did not violate Section 8(a)(1) and (3) of the Act by reducing Thomas Vilmin's hours, denying him time off, and discharging

would see him then." Later, according to Mrs. Vilmin, her husband called her, and she gave him Reyna's response. Reyna testified that on Monday, September 21, Glenna Vilmin called him and told him Tom would return on September 22. I credit Reyna concerning the date of the call. I am persuaded, under the circumstances presented, that his response to Glenna Vilmin constituted nothing more than an acknowledgement that he would discuss Tom's discharge at that time, not approval of Vilmin's return to work on September 22. This conclusion is supported by the fact that at no time during his phone conversation with Reyna on September 22, or his subsequent talk with Charles Kerr, did Vilmin claim Reyna had approved his extended absence.

[10] The General Counsel called two witnesses for the purpose of attempting to show that Vilmin had been treated disparately in having been denied time off. It was these witnesses, Mike Eauslin and Curtis Maas, to whom Vilmin was obviously referring in his remark about other drivers during the conversation with Reyna on September 11. Eauslin testified that he was permitted time off from his city route to look for another job. However, Eauslin had longstanding and continuous permission for this practice, and his absences were covered by an approved advance arrangement with a substitute, none other than Thomas Vilmin. It is clear that Vilmin could not have arranged for a substitute on his school bus route because he realized no one else knew that route. Maas testified to a completely anomalous set of circumstances. Despite counsel for Respondent's offer to stipulate the information he desired to adduce, Maas, an entirely neutral witness, was pressed by the General Counsel, in a most insensitive examination, into revealing the effects of his personal problem and illness on his working life to the point where I became seriously concerned at Maas' obvious emotional distress. In any event, as later became apparent, this acute embarrassment imposed on Maas served no useful purpose. His testimony is immaterial, in that the circumstances surrounding his absences, and the advance arrangements made with his employer to compensate for them, are not even remotely comparable to Vilmin's. In addition, Maas never left work without permission.

[11] On cross-examination Vilmin acknowledged that he had completely omitted from his affidavit any reference to the Union having been made in his conversation with Kerr. Undaunted, Vilmin further strained credulity by maintaining that his memory was clearer at the time of his testimony in October 1982 than it had been in January, when his statement was given to the Board.

[12] For example, the General Counsel, in questioning Kerr, claimed to have found a copy of the Union's demand for recognition in Vilmin's personnel file. I attach no significance to this claim, which is not in the form of testimony. Kerr's testimony on the subject is mere speculation about the subpoenaed documents, which had changed hands numerous times.

[13] Thus, in December 1980, Paul Spellman and Mike Spellman took time off without Reyna's permission, lost their jobs, and were not reinstated.

him on September 12 for his union sympathies and activities as alleged in the complaint.

CONCLUSIONS OF LAW

1. The Respondent, Transportation Services of Watertown, Inc., is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. By interrogating employees concerning their union sympathies, threatening enforcement of the Respondent's work rules, threatening to close down operations if the Union came in, and by soliciting employees' grievances with a view to making adjustments for the purpose of thwarting employees' union desires, I find that the Respondent violated Section 8(a)(1) of the Act.

4. The Respondent has not violated the Act in any respects other than those specifically found.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in and is engaging in certain unfair labor practices, I find it necessary to order that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[14]

ORDER

The Respondent, Transportation Services of Watertown, Inc., Watertown, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees concerning their union sympathies, threatening employees with enforcement of work rules and closure of operations if the Union comes in, and soliciting grievances from employees with a view to making adjustments for the purpose of thwarting employees' union desires.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Post at its facility at Watertown, Wisconsin, copies of the attached notice marked "Appendix."[15] Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

The complaint is dismissed in all other respects.

[14] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[15] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT interrogate employees concerning their union sympathies or desires, threaten them with enforcement of our work rules or closure of operations if the Union comes in; nor will we solicit grievances from them with a view to making adjustments for the purpose of thwarting our employees' union desires.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

TRANSPORTATION SERVICES OF WATERTOWN, INC.